

Hartford Susan L

From: Hartford Susan L
Sent: Tuesday, May 02, 2006 4:40 PM
To: Olson Nina E
Cc: Wall Judith M; Drexler Kenneth J; Weir Matthew A
Subject: the relationship between EITC, deficiency procedures, and notice of claim disallowance procedures



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Back in February, you asked our office for guidance on the relationship between the EITC, deficiency procedures, and notice of claim disallowance procedures. We apologize for the delay in responding to you, but we wanted the Counsel experts on Procedure to confirm our understanding. In your email below, you had indicated that you wanted guidance so that you could hold a meeting with SBSE and W&I to ensure that everyone is on the same page regarding the proper use of deficiency procedures. Our initial summary of our understanding is attached, as well as a memo from Procedure & Administration that concurs with our understanding, subject to minor points of clarification. This should assist you in preparation for any such meeting.


Please let us know if you have any questions.

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Office of Chief Counsel
Internal Revenue Service
memorandum


date: April 28, 2006



to: Judith M. Wall
Special Counsel to the National Taxpayer Advocate

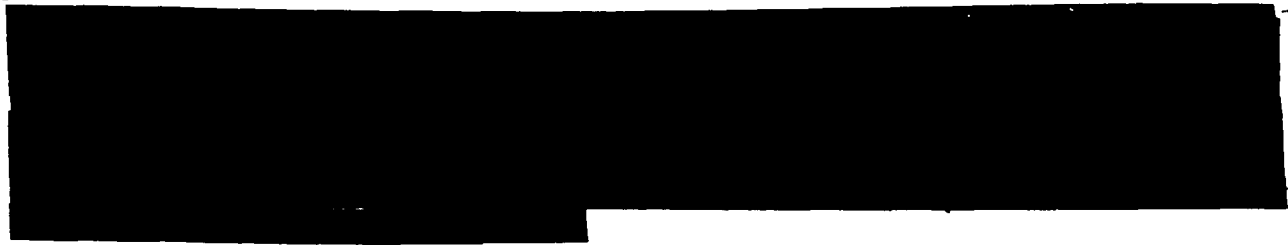
from: George Bowden 
Special Counsel
(Procedure & Administration)

subject: Relationship Between EITC, Deficiency Procedures, and Notice of Claim Disallowance Procedures

This is in response to your memorandum dated March 13, 2006, requesting our concurrence with your understanding of the relationship between the earned income tax credit (EITC), deficiency procedures and notice of claim disallowance procedures is correct, as set forth in a series of bullet points.

 prior to 1988, the definition of a deficiency in section 6211 did not include the EITC; that section 6201(a)(4) provided for summary assessment authority in the case of a return or claim involving an overstatement of the EITC; and that the Technical and Miscellaneous Revenue Act of 1988 repealed section 6201(a)(4) and amended section 6211(b)(4), such that the overstatement of the EITC would be taken into account for purposes of determining the existence of a deficiency.

 the Service must follow deficiency procedures rather than summarily assess the tax when disallowing all or part of the EITC on an original return except in the case of an error on the return that is a mathematical or clerical error as defined in section 6213(g)(2). 


Historically, these claim disallowance and notice of deficiency procedures generally have not overlapped, because the Service issued most refunds claimed on original returns and followed deficiency procedures to assess and collect excessive refunds, if examination of the return later disclosed a deficiency. Claim disallowance procedures

generally came into play when taxpayers filed claims for refunds after the filing of the original return and the Service examined the claim prior to making a refund. In such cases, the Service's consideration would generally be limited to the refund claim and deficiency procedures would not be used.

Freezing refunds claimed on original returns has resulted in the overlap of these procedures. As we understand the resolution of this issue, the Service has agreed to use deficiency procedures (or math error, if applicable), in cases involving the EITC. This allows the taxpayer access to the Tax Court (if the taxpayer disputes a math error notice, the Service must follow deficiency procedures to assess additional tax) but also allows the Service to assess additional tax.

Notice of deficiency procedures, math error and summary assessment procedures, as applicable, allow the Service to assess tax due from an individual. If a notice of deficiency is issued, the taxpayer may litigate the issue in Tax Court. Claim disallowance procedures inform the taxpayer of the denial, in whole or part, of a claim for refund. The notice of claim disallowance provides the taxpayer with immediate access to a refund court and starts a period of limitations running on the taxpayer's ability to sue. Issuing a notice of claim disallowance does not allow the Service to assess a deficiency. While a strong argument could be made otherwise, issuing a notice of deficiency may not meet the formal requirements of a notice of claim disallowance and may not start the period of limitations running for refund suits.

The notices of deficiency used by the Service in these cases should explicitly state that the refund claimed on the original return is disallowed, to ensure that the notice of deficiency may serve also as a notice of claim disallowance. The Service will issue notices of claim disallowance to taxpayers where no notice of deficiency or math error notice will be sent, for example, where there is no deficiency.

freezing the refund is not the equivalent of denying the refund and until the IRS takes action on a claim (that is, grants the claim in full or in part, or denies the claim), the IRS does not have to issue a notice of deficiency or a notice of claim disallowance.

there is no requirement in section 6532 or any other section of the Code that the IRS must issue a notice of claim disallowance, but that the issuance of such notice triggers the 2-year period of limitations for filing a refund suit. if a taxpayer chooses not to contest the denial of the EITC in the Tax Court, the taxpayer may file a refund suit in a United States district court or the Court of Federal Claims after six months has elapsed with no response from the IRS.